

ORIGINAL

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Jacob Smith Reg No. 10758-122
Name and Prisoner/Booking Number
FDC Honolulu
Place of Confinement
P.O. Box 30080
Mailing Address
Honolulu, Hawaii 96820
City, State, Zip Code

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 30 2022

at 11 o'clock and 00 min. a M
CLERK, U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Jacob L.L. Smith
(Full Name of Plaintiff)

Case No. CV 22 00134 JMS KJM
(To be supplied by the Clerk)

vs.
Estela Derr
Shawn Tabar

PRISONER CIVIL RIGHTS COMPLAINT

- Original Complaint
 First Amended Complaint
 Second Amended Complaint

(Full Names of Defendants; DO NOT USE *et al.*)

A. JURISDICTION

1. Jurisdiction is invoked pursuant to:

- a. 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
 b. 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)
c. Other: (Please Specify) _____

2. Plaintiff: Jacob L.L. Smith

Institution/city where violation occurred: FDC Honolulu

3. First Defendant *: Estela Derr

This defendant is a citizen of (state and county) Hawaii Oahu,
and is employed as:

Warden at FDC Honolulu.

(Position and Title)

(Institution)

This defendant is sued in his/her individual official capacity (check one or both). Explain how

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this defendant was acting under color of law:

The Defendant is the Warden of FDC Honolulu and ultimately responsible for all incidents at the facility.

4. Second Defendant: Shawn Tabor

This defendant is a citizen of (state and county) Hawaii
Oahu, and is employed as:

Lieutenant at FDC Honolulu
(Position and Title) (Institution)

This defendant is sued in his/her X individual X official capacity (check one or both). Explain how this defendant was acting under color of law:

The Defendant was responsible for sending the Plaintiff to the hole
(SHU) on incident report number 3596380 (see attached "A")

5. Third Defendant: _____

This defendant is a citizen of (state and county) _____
_____, and is employed as:

_____ at _____
(Position and Title) (Institution)

This defendant is sued in his/her _____ individual _____ official capacity (check one or both). Explain how this defendant was acting under color of law:

(If you would like to name additional defendants, make a copy of this (blank) page and provide the necessary information.)

* A defendant may be named in an individual or official capacity, or both. To sue a defendant in their **individual capacity**, you must be able to state facts showing that the defendant was actually involved in violating your rights. A suit against a defendant in their **official capacity** is in reality a suit against the office or position the defendant holds. Only injunctive relief is available in an official capacity suit against a state official. This is because the Eleventh Amendment confers immunity upon the state or its officials against monetary damages resulting from federal court litigation.

"Color of law" refers to whether the person is a private party or an employee, official, or agent of a state, county, city, or the federal government. There can be no civil rights action under § 1983 unless the defendant was "acting under color of law." After the color of law requirement is met, then it must be determined in which capacity the defendant is being sued.

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5. Third previous lawsuit:

- a. Plaintiff _____
- Defendants _____
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):

- c. Claims raised: _____
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

- e. Approximate date of filing lawsuit _____
- f. Approximate date of disposition _____

(If you have filed more than three lawsuits, make a copy of this (blank) page and provide the necessary information.)

6. Have you filed any actions in federal court that were dismissed because they were frivolous, malicious, or failed to state a claim upon which relief could be granted? Yes No.

If you have had three or more previous federal actions dismissed for any of the reasons stated above, you may not bring another civil action in forma pauperis unless you are under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

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C. CAUSE OF ACTION

COUNT I

1. The following constitutional or other federal civil right has been violated by the Defendant(s):
8th Amendment violation against cruel and unusual punishment.

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)
- Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

The Plaintiff received an incident report (number 3596377) on February 15, 2022 (see attached "A"). The incident report states that the Plaintiff had problems with his "equilibrium" and was urine tested. The test was immediate and returned negative. Defendant Tabar is not a physician or capable of making a medical diagnosis. However, if the Defendant observed such symptoms and tested the Plaintiff (as he did) with a negative result, he has a legal obligation to involve Health Services and have the Plaintiff examined. Rather than seek medical attention for the Plaintiff, Defendant Tabar placed the Plaintiff in the hole and processed the attached incident report which had to be dismissed

CONTINUED

4. **Injury:** (State how you have been injured by Defendant(s)' actions or inactions.
Intentional infliction of emotional distress.

COUNT ONE SUPPORTING FACTS CONTINUED

for lack of any evidence whatsoever. The Plaintiff disputes many claims in the incident report, but as the incident report was dismissed did not pursue remedies through the Bureau of Prisons.

The February incident was not the only false claim made by Defendant Derr's staff that resulted in action against the Plaintiff. The Plaintiff has been accused of participating in the well known July 12, 2021 riot and has been placed in the hole for "investigation" for fighting (no incident report issued), using the drug spice (no evidence whatsoever) and other issues that were never even communicated to the Plaintiff.

The Plaintiff have never tested positive for any substance. He remains on the "hot list" and is tested regularly.

The Plaintiff feels that these incidents are part of a campaign by Defendants Derr and Tabar to harass him as much as they can.

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COUNT II

1. The following constitutional or other federal civil right has been violated by the Defendant(s):
8th Amendment against cruel and unusual punishment

2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)
- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| | <input checked="" type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. Supporting Facts:(State as briefly as possible the FACTS supporting Count II, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

After Defendant Derr's gang riot on July 12. 2021 that involved
more than 30 inmates in unit 5A, the Plaintiff was placed in the
hole (SHU) for fighting. The Plaintiff never received an incident
report and was returned to the unit (5A). Unit 5A houses (against
US law and Bureau of Prisons policy) deportable alien gang members
(Ms-13, Paisa's, Tango's and Northeno's) Derr's gang riot primarily
involved these inmates. The Plaintiff has yet to be sentenced and
should not be housed with these gang members. Bureau of Prisons policy
dictates that these aliens should be housed separately. However, with
an open and empty unit (5B), Defendant Derr continues to house the
deportable aliens in the Plaintiff's unit jeopardizing his safety.

4. Injury: (State how you have been injured by Defendant(s)' actions or inactions.
Intentional infliction of emotional distress

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COUNT III

1. The following constitutional or other federal civil right has been violated by the Defendant(s):

— 1 —

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count) Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other:

- 3. Supporting Facts:** (State as briefly as possible the FACTS supporting Count III, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

4. Injury: (State how you have been injured by Defendant(s)' actions or inactions.)

(If you assert more than three Counts, make a copy of this (blank) page and provide the necessary information.)

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D. REQUEST FOR RELIEF

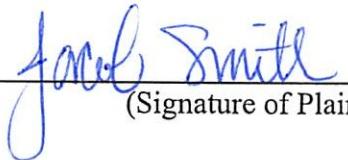
State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

\$15,000 for intentional infliction of emotional distress. The

Plaintiff asks the Court for an Order of Protection against both Defendants preventing them from further harassment and retaliation against the Plaintiff.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. §1621.

Signed this 22 day of March, 2022.
(month) (year)



(Signature of Plaintiff)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than **fifteen (15) additional pages**. Number these pages in relation to the final page number of the section that is being extended (i.e. additional defendants' pages should be numbered "2A, 2B, etc.," additional previous lawsuits' pages "4A, 4B, etc.," additional claims should be numbered "7A, 7B, etc." This form, however, must be completely filled in to the extent applicable.